

I. INTRODUCTION AND SUMMARY

This request for exclusion of a product is being filed by Hylsa, S.A. de C.V., a Mexican producer and exporter of hot-rolled sheet and strip. While Hylsa believes that all hot-rolled sheet and strip from Mexico should be excluded from relief based on the provisions of NAFTA, it also is filing this brief to discuss one specific product, ultra-thin gauge hot-rolled sheet, which is a specialty product that should be excluded for reasons separate and apart from the general exclusion of hot-rolled sheet from Mexico from relief.

The ultra-thin gauge hot-rolled sheet manufactured by Hylsa is manufactured by only a few producers in the world. Its applications are in building systems, profiles, drums and tubes. While there is capacity to produce a limited amount of this product in the United States, that production cannot keep up with demand. Moreover, the U.S. customers for this product need it for their production and do not have a ready substitute. Based on the longstanding approach that the President has taken in similar situations, this product is not entitled to relief.

II. DESCRIPTION OF THE PRODUCT

The product that we seek to exclude is ultra-thin gauge hot-rolled sheet that is rolled on special equipment (which we describe below). The definition of ultra-thin gauge is hot-rolled sheet of 1.9 mm or below in thickness. There are two sub-types of this product – carbon steel ultra-thin gauge and high-strength ultra-thin gauge.

Both types of ultra-thin gauge product have a guarantee of tolerances that go beyond ASTM tolerances. Specifically, the tolerances are defined as 50% of ASTM tolerances.

High-strength ultra thin gauge merchandise is in the range of 1.4 to 1.9 mm. The guarantee of strength for this product is a minimum of 50 KSI in yield strength. The other product, carbon steel ultra-thin gauges, are in the range of 0.9 to 1.5 mm.

The HTSUS classifications under which these products may enter the United States are: 7208.39.00.15; 7208.39.00.30; 7208.39.00.90; 7208.82.70.30; and 7208.27.00.90. See Attachment A to this submission.

III. THE STATUTORY FRAMEWORK AND LEGAL STANDARDS

The purpose of relief under section 201 of the Trade Act of 1974 is limited. It is to provide the domestic industry with “sufficient time to adjust to freer international competition.”¹ The cumulative impact of any import restrictions may not “exceed the amount necessary to prevent or remedy the injury” found. 19 U.S.C. §2253(e)(2). This provision is particularly important to bear in mind with regard to NAFTA countries, where the right to retaliate against remedial action taken by the United States is immediate.² It plainly is not in the interest of the United States to impose relief for which retaliation can be taken, when that relief fails utterly to do the U.S. industry any good.

In Stainless Steel and Alloy Tool Steel³ the U.S. International Trade Commission (“ITC”) developed a set of criteria that are useful to consider here. The ITC’s examination of the facts “were designed to establish the extent to which each requested product filled a need in the U.S. market that could not be supplied by U.S. producers, and due to such factors as small volume, unique end-use application, and/or return on investment, would not likely be supplied if

¹ S. Rept. No. 93-1298, 93d Cong., 2d Session (1974) at 119.

² Article 806 of NAFTA.

³ Inv. No. TA-201-48, USITC Pub. 1377 (May 1983) at 47, 55.

restrictions on imports were put in place.” Among the criteria to be assessed are: (1) whether the product is presently made or has been recently made by U.S. producers; (2) whether the product is a necessary article for a particular end use, and has limited or no other application outside that use; (3) whether the product requires special machinery or equipment or expertise to manufacture, and whether it is produced at only a limited number of facilities abroad; (4) whether the product represents a small share of U.S. consumption of the generic product category; and (5) whether the product represents a small volume of imports.

IV. APPLICATION OF THE STANDARDS TO THIS CASE

Applying the standards of the ITC to this case we find that ultra-thin gauge hot-rolled sheet is plainly entitled to exclusion from any remedy. Below we apply the standards and provide factual bases for this exclusion.

A. Manufacture of the Product by U.S. and Foreign Producers

Although information on the exact amount of production of ultra-thin gauge hot-rolled sheet by U.S. producers is not publicly available, it is apparent that U.S. producers do not produce a sufficient quantity of this specialized product to meet U.S. demand. Only two U.S. producers make the product – Nucor and Steel Dynamics. We believe, based on their limited presence in the marketplace that both of these companies have limited capacity to produce ultra-thin gauge product. However, we do not have precise figures for their capacity, since this is a minor product for both companies.

The only other producers who, to our knowledge, have sold any substantial quantities of ultra-thin gauge product to the United States are Japanese producers. However, these producers now are unable to sell substantial quantities to the U.S. because of a dumping order on hot-rolled

sheet and strip from Japan.⁴ Thus, the only foreign producer now able to supply this product in any significant quantities is Hylsa.

We do not know the exact amount of ultra-thin gauge hot-rolled sheet sold in the United States from 1996 to 2000, but we believe that Hylsa has about [0.36] percent of U.S. consumption currently and that this percentage has been stable for the last few years. Our estimate also is that annual consumption of ultra-thin gauge hot-rolled sheet will remain basically flat through 2005.

There is no ready substitute for high-strength ultra-thin gauge hot-rolled. On the other hand, cold-rolled sheet and strip can be substituted to some extent for the hot-rolled carbon steel ultra-thin gauge product, although the ultra-thin gauge product has some different properties, such as the yield strength. The higher yield strength of ultra-thin gauge hot-rolled makes it preferable for some applications. We have attached a notarized letter from a customer as Attachment D to this response. That letter describes the need for this product and the unique ability of Hylsa to produce it.

B. Limited Applications of the Product

The product is limited in its applications, and because of the cost, will not be substituted for other hot-rolled products. The applications for this product are building systems, profiles, drums and tubes.

C. The Product Requires Special Machinery for its Manufacture

We are providing a description of the special equipment needed to produce ultra-thin gauge hot-rolled sheet and strip in Attachment B to this submission. That equipment includes special kinds of rolls as well as specialized computer equipment to ensure that the product meets

⁴ 64 Fed. Reg. 34778 (June 29, 1999).

the very exacting specifications required by customers. The reason that there is very limited production of this product worldwide is because the equipment needed has not been purchased by many producers.

D. The Product Represents Only a Small Share of Imports and Domestic Production

We are providing, as Attachment C to this submission, a chart showing the sales of ultra-thin gauge hot-rolled sheet and strip by Hylsa. The chart indicates that the sales of Hylsa to the United States were a mere [0.36] % of consumption of hot-rolled sheet and strip in 2000 and only [0.11]% of consumption in 2001. As noted above, we believe that other foreign producers have provided only small amounts of this product to the United States during that time period. This utterly insignificant share of the hot-rolled market indicates that allowing an exclusion for this product would in no way lead to a loophole in the remedy that would have a significant effect on the U.S. industry.

V. CONCLUSION

Based on the foregoing, we ask that ultra-thin gauge hot-rolled sheet and strip, as described above, be excluded from any remedy imposed in this case.

Respectfully submitted,

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